IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1648 OF 1999

Smt. Kausalya Sampat ....Petitioner

versus

Mumbai Municipal Corpn. and anr. ... Respondents.

Shri B.G.Vaidya with Mr. Mustafa Kachwala for the Petitioner.
Rajashree M. APP for State.

CORAM; V.M. KANADE, J.

DATED; JANUARY 27, 2006.

P.C:

1. Heard the learned counsel for the Petitioner. None appears for the respondent though served.

2. The short question which is raised for consideration before this court is whether cognizance can be taken of a complaint which is filed beyond the period of 90 days as prescribed under section 514-C of the Municipal Corporation Act. In the present case notice was issued to the petitioner for occupying the premises without obtaining occupation certificate. The Inspector of the Municipal Corporation after taking inspection in the month of January 1991, noticed that the petitioner was occupying the premises without

obtaining necessary certificate and thereafter complaint was filed in October 1991.

3. An application was made by the petitioner in the trial court alleging that the complaint was barred by limitation as the petitioner had been in occupation of the premises since 622 days before the complaint was filed and therefore the limitation prescribed under section 514-C of the Municipal Corporation Act was clearly attracted and the complaint was liable to be dismissed. It is further submitted that even otherwise as per the provisions of section 219 of Cr.P.C. the Magistrate would not have taken cognizance in respect of the offence which had taken place in respect of the same transactions which would infact constitute more than three different offences in respect of the same transactions and on that ground also the complaint was liable to be quashed.

4. In support of the said submission he relied on the judgment of the Supreme Court in the case of State of **Bihar Vs. Deokaran Nenshi and another reported in AIR 1973 S.C. 908.** The trial court dismissed the application. However the Sessions court also dismissed the criminal applciation. Against the said orders passed by the lower courts, he has filed the present criminal writ petition.

5. The learned counsel appearing on behalf of the petitioner streneously urged the aforesaid submissions and submitted that the bar of limitation would clearly apply and therefore the Magistrate had no authority nor the jurisdiction to take cognizance of such complaint which was filed beyond the period of limitation. He has submitted that the provisions of section 469 of Cr.P.C. cannot be made applicable to special acts, which prescribed penal provisions and in which period of limitation itself was prescribed under the said Act. He has also submitted that therefore the provisions of section 469 of Cr.P.C. would not apply in the facts of the present case.

6. So far as the first submission which is made by the learned counsel for the applicant is concerned, in my view, it cannot be said that a complaint which is filed beyond the period of 90 days after the accused is in unlawful possession without obtaining necessary permission or necessary occupation certificate is not maintainable at all. Plain reading of section 353-A clearly envisages a situation where the person who is found to be in occupation does not possess the necessary occupation certificate is liable to be prosecuted. Therefore the bar which is provided under the provisions of section 514-C of the Municipal

Corporation Act obviously was intended to restrict the said period from the date on which the person is found to be in unlawful possession. Therefore it cannot be said that such a complaint is not maintainable being barred by limitation. The question regarding the beginning of the period and the period for which such a person can be prosecuted will have to be determined by the trial court as per the facts of each case. It has to be borne in mind that the section prescribes the penalty for illegal occupation and the penalty is levied per day of the illegal occupation. It appears that keeping in view the said penal provision, such period of limitation appears to have been prescribed under section 514-C of the Municipal Corporation Act. However without going into the merits of the case, according to me the submission of the learned counsel that such a complaint is not maintainable, cannot be accepted and this question regarding the period will have to be determined by the trial court after the evidence is adduced by both the parties.

7. So far as the second submission is concerned, regarding the jointer of charges and the trial of the petitioner in respect of more than three cases is concerned, again it shall be open for the Magistrate, to consider and decide this issue after taking into consideration the submission made by the learned

counsel and the counsel appearing on behalf of the Corporation.

8. So far as the judgment on which reliance has been placed by the learned counsel for the petitioner are concerned I agree with the finding recorded by the Sessions court and in my view the Sessions Court has given cogent reasons while not accepting the ratio of the judgment on which reliance is placed by the learned counsel for the petitioner.

9. In the result, the writ petition is dismissed. Rule is discharged. Matter is remanded back to the trial court. It is clarified that all the questions raised in this writ petition are kept open and shall be decided on its own merits.

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